

**Attachment 1:**

**E-mail text from Adam Kinsman, Deputy County Attorney, regarding the difference between policies and ordinances**

Recently, Jack asked me to give a general outline of the differences between an ordinances and policies. I note that this is informational only and is given without the benefit of any context in which to place the information.

Ordinances are adopted by the Board of Supervisors pursuant to the authority granted by the General Assembly and set forth in the Virginia Code. Ordinances are adopted and changed only after a meeting and vote by the Board of Supervisors. If there is a conflict between an Ordinance and policy document, the Ordinance will control.

Policy documents may be adopted by the Board, the Commission, staff, or any other committee or group. When a policy affects the entire County operation, it is generally prepared by the County Administrator and is known as an "Administrative Regulation." A copy of Administrative Regulation No. 51 is attached. The authority to adopt policy documents may be explicitly or implicitly found in many places, including the Virginia Code, the County Charter, the County Code, Board ordinance, etc. Policies are most often adopted to encourage consistent treatment of a regularly-encountered set of facts (see, for example, the attached AR on parking restrictions). Policy documents are generally more detailed than Ordinances. Policy documents are also more easily changed; policy adopted by the Board may be changed by the Board at its discretion. Policy developed by the Commission, staff, or other committees may be changed without Board action, though the Board in its discretion may direct that any non-Board policy be changed. The County Charter also gives the County Administrator the authority to change staff-created policy.

Whether a policy or an ordinance (or both) is preferable depends upon the given set of facts. Consider the Board-adopted proffer policy. There is no explicit authority in the Virginia Code to adopt an ordinance setting what impacts a developer must mitigate when requesting a rezoning of his or her property. The Virginia Code does, however, direct the Board to consider the impacts created by a proposed rezoning. In response, the Board has adopted a policy which states that if school impacts are to be offset, a certain amount of dollars should be proffered depending upon the proposed type of residential unit. Of course, if the developer does not proffer the amount set forth in the policy, this does not render his application void or automatically denied; rather, the Board may consider the fact that the proffers to not meet the policy as one of the factors when it makes its decision. Contrast this with a developer who does not meet the requirements of the zoning ordinance: the application must be denied (or a waiver to the ordinance must be granted).

Another more recent example is affordable housing. The Virginia Code allows localities to adopt affordable housing ordinances. If the Board adopted such an ordinance, then developers are required to provide affordable housing in the manner set forth in the ordinance. An alternative to an affordable housing ordinance is an affordable housing policy. In this case, the Board could adopt a policy for affordable housing, much like the Board's proffer policy. This would apply to legislative cases (whereas an ordinance could apply to all cases) and would be a statement of the Board's desire to see the inclusion of affordable housing in an application.

I hope that you find this broad, general discussion of policies and ordinances helpful. Should you have a question based upon a particular set of facts, please do not hesitate to contact me.

Adam